

Consideration of amendments to nonrule policy document pertaining to the Commission's Division of Hearings; Administrative Cause No. 12-040A

For consideration as set forth in Exhibit "A" are proposed amendments to Information Bulletin #1 that governs the Division of Hearings and related matters. A database would be identified which collects "agreed orders" entered in Commission proceedings under IC 4-21.5 (commonly referred to as "AOPA"). The URL would be updated for CADDNAR, the Commission's searchable compilation of decisions following contested proceedings. Relocation of the Division of Hearings offices from the Indiana Government Center South to the Indiana Government Center North would be noted. The nonrule policy document would be reconfigured to include a "History" as the final section. Other updates and technical changes would be made.

Exhibit "A"

NATURAL RESOURCES COMMISSION

Information Bulletin #1 (~~Second~~ Third Amendment)

SUBJECT: Establishment of Division of Hearings; Indexing of Final Adjudicative Agency Decisions; Transcript Fees. ~~To be noted, the information outlined here supersedes Information Bulletin #1 published at 13 IR 1938.~~

ESTABLISHMENT OF THE DIVISION OF HEARINGS

The Department of Natural Resources (~~the "DNR"~~) is among ~~these~~ state agencies that are governed by IC 4-21.5 (sometimes called the "administrative orders and procedures act" or the "administrative adjudication act" "AOPA"). ~~and IC 4-22 rule adoption. The Indiana General Assembly has provided that effective July 1, 1990, all Hearings required by IC 4-21.5 and IC 4-22 for the Department will be conducted on behalf of the Natural Resources Commission. The Natural Resources Commission (the "Commission"), through its AOPA Committee or one of its administrative law judges, serves as the "ultimate authority" for DNR under AOPA. See IC 14-10-2-3, and IC 14-34-2-2, and 312 IAC 3-1. A Commission administrative law judge serves as the ultimate authority for the Board of Licensure for Professional Geologists and the Board of Registration for Soil Scientists. The Commission also adopts permanent rules that apply to responsibilities and functions of the DNR. IC 14-10-2-4 and IC 14-10-2-7.~~

~~To assist in the separation of the hearings functions from other legal functions of the Department of Natural Resources, the Natural Resources Commission has, by resolution, established under IC 14-10-2-2 a "division of hearings." The Commission approved the By resolution on January 25, 1990, the Commission established its Division of Hearings. As required by statute, the resolution was considered and approved by the Governor on April 27 1990 and became effective on July 1, 1990. The resolution provides provided in part:~~

The division of hearings is established, under the natural resources commission, to be coordinated by the chief administrative law judge: (1) to conduct hearings and proceedings relative to [AOPA], the rule adoption act, the conservancy district act, and as otherwise specified by the commission; and (2) to provide assistance to the commission and the other boards of the department in seeking to conform with the legal requirements for the conduct of their meetings.

P.L. 28-1990 originally provided that hearing processes under AOPA and for permanent agency rules were the responsibility of the Commission and its "division of hearings". IC 14-3-3 repealed. Following recodification, the Division of Hearings and its administrative law judges are governed by IC 14-10-2-2.

~~The current offices of the Division of Hearings are located at Indiana Government Center South, 402 West Washington Street, Room W272, Indiana Government Center North, 100 North Senate Avenue, Room N501, Indianapolis, Indiana 46204-2200. The telephone number is (317) 232-4699.~~

INDEXING OF FINAL ADJUDICATIVE AGENCY DECISIONS

~~The administrative adjudication act AOPA provides in IC 4-21.5-3-32 that an agency shall index and make available all written final orders for public inspection and copying. In addition to providing better communications to the regulated public, this provision acknowledges that an agency may utilize an indexed order as precedent. The sanction applicable to an agency that does not index its orders is that the agency generally may not use nonindexed orders as precedent.~~

~~The Division of Hearings maintains a database on the Internet, the Commission's website called "CADDNAR". Accessible through CADDNAR are decisions rendered by the Commission following the completion of a contested proceeding. Included are those following (1) hearing; or (2) summary judgment; or, (3) involuntary dismissal, where if a noteworthy point of law is considered. In addition, Upon the request of the parties, settlement agreements are included that have notable precedential value agreed orders may be included if they address novel legal issues. CADDNAR includes all such Commission decisions since 1978 when the agency began regularly assigning adjudicatory cases proceedings to administrative law judges. An attempt is made to track the history of individual Histories are provided for decisions taken on judicial review to a circuit or superior court or on appeal. CADDNAR is a searchable database available on-line at the Natural Resources Commission Homepage at http://www.in.gov/cgi-bin/nrc/decision_list.pl <http://www.in.gov/nrc/2369.htm>.~~

~~During its meeting of In a resolution approved on November 22, 1988, the Natural Resources Commission, by resolution, adopted CADDNAR as the agency index under IC 4-21.5-3-32 for final orders of the Department of Natural Resources DNR agency actions. The Commission also specified that material included decisions in CADDNAR may be used as precedent for actions controlled by the administrative adjudication act a proceeding under AOPA.~~

Use of CADDNAR was first acknowledged by the Indiana Court of Appeals in *Peabody Coal v. Indiana DNR*, (1994 Ind. App.), 692 N.E.2d 925. Subsequent reported decisions have also acknowledged CADDNAR.

The Division of Hearings also maintains a database of AOPA agreed orders. These are organized alphabetically on recordable discs and are available for viewing and copying.

TRANSCRIPT FEES

~~Under the administrative adjudication act AOPA, the party that initiates judicial review of a final agency order is generally responsible for the costs of transcript preparation. As provided in IC 4-21.5-5-13(d), the agency "shall charge" the person seeking judicial review "with the reasonable cost of preparing any necessary copies and transcripts for transmittal to the court." The statutory subsection also clarifies that preparation costs include more than copying expenses.~~

The ~~Natural Resources Commission~~ has adopted [312 IAC 3](#) to assist in its implementation of ~~the administrative adjudication act AOPA~~. [312 IAC 3-1-14](#) governs court reporters and transcripts. Subsection (c) provides, in part, that the "party who requests a transcript. . . shall pay the cost of the transcript: (1) as billed by the court reporting service; or (2) if the transcript is prepared by an employee of the [C]ommission, as determined from time to time by the [C]ommission on a per page basis after consideration of all expenses incurred in the preparation of the transcript." ~~The Natural Resources Commission~~ At its March 24, 1998 meeting, ~~has the Commission determined set the per page basis fee~~ for a transcript prepared by an employee of the Commission according to the 1988 resolution. ~~"The Natural Resources Commission resets the fee for transcript preparation "at \$3.80 per page."~~

HISTORY

Information Bulletin #1 was first published at 13 Ind. Register 1938 on July 1, 1990. The First Amendment noted the per-page employee transcript fee was increased from \$1.60 to \$3.80. An address change for the Division of Hearings was noted from the Indiana Government Center North to the Indiana Government Center South. 26 Ind. Register 1375 (January 1, 2003). The Second Amendment was part of a process to review all Commission nonrule policy documents, with a view to potential sunseting, and included mostly technical changes. 20061011-IR-312060438NRC (October 11, 2006). The third amendment was approved on March 20, 2012. The URL for CADDNAR was updated. The return of the Division of Hearings offices to the Indiana Government Center North was noted. A new reference was made to the database of AOPA agreed orders, and the limited circumstance in which agreed orders may be included in CADDNAR was clarified. Other technical changes were also made.